

May 16, 2012

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: *Southwest Power Pool, Inc.*, Docket No. ER12-_____
Submission of Affected Systems' Facilities Construction Agreement

Dear Secretary Bose:

Pursuant to section 205 of the Federal Power Act, 16 U.S.C. § 824d, and section 35.13 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. § 35.13, Southwest Power Pool, Inc. ("SPP") submits an executed Affected Systems' Facilities Construction Agreement ("FCA") between SPP as Transmission Provider, Osage Wind, LLC ("Osage Wind") as Interconnection Customer, and Public Service Company of Oklahoma ("PSO") as Transmission Owner ("Revised Osage Wind FCA").¹ The Revised Osage Wind FCA modifies and supersedes the FCA between the Parties accepted by the Commission on October 13, 2011 in Docket No. ER11-4390-000.² SPP requests an effective date of April 16, 2012, for the Revised Osage Wind FCA.

I. Description of SPP

SPP is a Commission-approved Regional Transmission Organization ("RTO"). SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP has 66 members, including 14 investor-owned utilities, 11 municipal systems, 12 generation and transmission cooperatives, 4 state agencies, 8 independent power producers, 10 power marketers, and 7 independent transmission

¹ A copy of the Revised Osage Wind FCA, designated as First Revised Service Agreement No. 2234, is included with this filing. In addition, SPP, Osage Wind, and PSO are collectively referred to as "the Parties."

² *Sw. Power Pool, Inc.*, Letter Order, Docket No. ER11-4390-000 (Oct. 13, 2011) ("October Letter Order"). The agreement accepted in the October Letter Order is referred to as the "Original Osage Wind FCA."

companies. As an RTO, SPP is a transmission provider administering transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas. SPP is responsible for providing independent transmission services over the transmission facilities its members have placed under the SPP Open Access Transmission Tariff (“Tariff”). PSO has placed its transmission system under the functional control of SPP.

II. Background

Osage Wind and Associated Electric Cooperative, Inc. (“AECI”) have entered into an Interconnection Agreement (“Osage Wind IA”) to facilitate the interconnection of Osage Wind’s 150 MW generating facility (“Generating Facility”) to an AECI member’s transmission system.³ AECI is not a member of SPP, but the AECI member’s transmission system is interconnected to PSO’s transmission system, which is under SPP’s functional control.

In light of the interconnection of the Generating Facility to the AECI member’s system, and consistent with the Joint Operating Agreement between SPP and AECI, SPP performed a study to analyze the impact of the Generating Facility’s interconnection on the PSO transmission system (“ASGI Study”).⁴ Based on the ASGI Study, SPP determined that as a result of the interconnection of the Generating Facility to the AECI member’s transmission system a network upgrade is required on the PSO transmission system. While the Osage Wind IA governs the interconnection of the Generating Facility to the AECI member’s transmission system, including specifying any upgrades required on that system, it does not address the network upgrade needed on the PSO transmission system. Because PSO is an “Affected System,”⁵ it also is not a party to the Osage Wind IA (nor is SPP). Therefore, in order to memorialize the Parties’ responsibilities with regard to the construction of the upgrade on the PSO transmission system, SPP, Osage Wind, and PSO entered into the Original Osage Wind FCA.⁶

³ The AECI member is KAMO Electric Cooperative, Inc.

⁴ See Joint Operating Agreement Among and Between Southwest Power Pool, Inc. and Associated Electric Cooperative, Inc., Art. 7.3.3 (“JOA”). See also Revised Osage Wind FCA at Whereas Clauses (the Facility Study is known as “the Affected System Generation Interconnection Study ASGI-2010-006 published by Transmission Provider in December, 2010 (the ASGI Study).”).

⁵ An “Affected System” is “an electric system other than the Transmission System that may be affected by the proposed interconnection.” See Tariff at Attachment V, Section I, Definitions.

⁶ See *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,146, at (continued . . .)

Currently, SPP does not have a *pro forma* FCA in its Tariff. The Parties used SPP's *pro forma* GIA⁷ and other Commission-accepted FCAs as guidance in developing the Original Osage Wind FCA. The *pro forma* GIA is an appropriate reference document for SPP's development of the FCA, because similar to a GIA, an FCA facilitates the construction of upgrades necessitated by the interconnection of a generating plant. However, because the upgrades are being constructed on an Affected System, some of the *pro forma* GIA provisions, in particular those regarding operations of the generating plant, are inapplicable and therefore are not included in the Original Osage Wind FCA. Notably, the Original Osage Wind FCA is similar and consistent with other Commission-accepted FCAs filed by other transmission providers, pursuant to which interconnection customers are held responsible for the costs of upgrades on Affected Systems required as a result of their interconnections.⁸ The Commission accepted the Original Osage Wind FCA in the October Letter Order.

III. Description of the Revised Osage Wind FCA

Since the October Letter Order, the Parties have amended Appendices A and B of the Original Osage Wind FCA to update the scope and cost for Network Upgrades and to update the construction schedule. Because of these updates, the Parties executed a Letter Agreement⁹ and entered into the Revised Osage Wind FCA, which is identical to the Original Osage Wind FCA except for the updates in Appendices A and B. Accordingly, the Revised Osage Wind FCA also is based on the *pro forma* GIA and contains language similar to other Commission-accepted FCAs. The provisions of the Revised Osage Wind FCA are described below.

(... continued)

P 739 (2003), *order on reh'g*, Order No. 2003-A, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,171, *order on reh'g*, Order No. 2003-C, 2001-2005 FERC Stats. & Regs., Regs. Preambles ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Utils. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007) ("When the Interconnection Customer is required to pay for Network Upgrades on an Affected System, it must enter into an agreement with the Affected System Operator unless the payments are incorporated in the interconnection agreement that the Interconnection Customer signs with the Transmission Provider.").

⁷ See SPP Tariff at Attachment V, Appendix 6 (the *pro forma* GIA).

⁸ See *Midwest Indep. Transmission Sys. Operator, Inc.*, Letter Order, Docket No. ER11-2155-000 (Jan. 13, 2011); *Midwest Indep. Transmission Sys. Operator, Inc.*, Letter Order, Docket No. ER10-2540-000 (Nov. 1, 2010); *Duke Electric Transmission*, 113 FERC ¶ 61,139 (2005).

⁹ The Letter Agreement is included in this filing as Attachment A.

First, the “Whereas” clauses in the Revised Osage Wind FCA delineate the relationship between the Parties, as well as the circumstances that necessitate the Revised Osage Wind FCA.

Second, Article 1 contains the definitions of terms used throughout the Revised Osage Wind FCA. These definitions are similar to corresponding definitions in the *pro forma* GIA. However, the Revised Osage Wind FCA does not include all of the *pro forma* GIA definitions because not all of them are applicable to an FCA with an Affected System. In addition, the Parties added a definition for the term “Non-Breaching Party” to provide clarity in the termination provisions of the Revised Osage Wind FCA.

Third, Articles 2 and 11, which also are similar to the corresponding provisions of the *pro forma* GIA, contain provisions regarding the term and termination of the Revised Osage Wind FCA. Article 2 specifies that the Revised Osage Wind FCA shall be effective on the Effective Date of Revised Osage Wind FCA, which is defined as the date the Revised Osage Wind FCA is permitted to become effective by the Commission. Article 2 of the Revised Osage Wind FCA does not include provisions of Article 2 of the *pro forma* GIA pertaining to a “GIA,” the operations of the generating facility, and the disconnection of the generating facility because these provisions are not applicable to the construction of an upgrade on an Affected System. Similar to Article 11 of the *pro forma* GIA, the termination provisions in Article 11 of the Revised Osage Wind FCA are necessary to insulate the Parties from financial loss in the event of the termination of the agreement.

Fourth, Article 3 provides the terms and conditions for the construction of network upgrades and system protection facility requirements under the Revised Osage Wind FCA. This Article is necessary to ensure that the responsibilities for the construction of the network upgrades are clearly defined, and is largely consistent with the *pro forma* GIA. However, it contains some variations to accommodate the purpose of the Revised Osage Wind FCA, which is to govern the construction of an upgrade on an Affected System, not to govern the interconnection of generation of the SPP system. For example, Article 3 contains provisions governing the costs for network upgrades, which vary from the corresponding provisions in the *pro forma* GIA because the Revised Osage Wind FCA provisions need only pertain to costs for work on network upgrades on PSO’s system as a result of the interconnection of Osage Wind’s Generating Facility on AECI’s transmission system and not costs related to interconnection customer interconnection facilities, and transmission owner interconnection facilities associated with interconnecting a generator to the SPP system through a GIA. For the same reason, the other provisions in Article 3 of the Revised Osage Wind FCA are similarly more narrow in scope than the *pro forma* GIA.

Fifth, Article 5 provides a mechanism for the exchange of information among the Parties, which will facilitate the implementation of the Revised Osage Wind FCA. Similarly, Article 16 contains provisions that facilitate the exchange of notices under the Revised Osage Wind FCA.

Sixth, Article 12 provides that Parties to the Revised Osage Wind FCA can use affiliates, consultants, contractors, and suppliers, to perform their obligations under the Revised Osage Wind FCA, but use by a Party of other entities to perform its obligations will not relieve the Party of its obligations under the Revised Osage Wind FCA. This provision is necessary to allow the Parties to hire subcontractors, but still keep the Parties liable for their obligations under the Revised Osage Wind FCA.

Seventh, Article 17 contains miscellaneous provisions that are standard contract provisions including: waiver (Article 17.1 – Waiver); governing law (Article 17.2 – Governing Law); counterparts (Article 17.6 – Counterparts); how to resolve conflicts within the Revised Osage Wind FCA (Article 17.8 – Conflicts); and a clause signifying that the Revised Osage Wind FCA constitutes the final, complete agreement between the Parties (Article 17.5 – Entire Agreement).

Eighth, Appendix A of the Revised Osage Wind FCA, like Appendix A of the *pro forma* GIA, contains detailed information on the network upgrades to be built under the Revised Osage Wind FCA, including the pertinent costs estimates and responsibility, transmission credits, construction schedule, and monthly payment schedule. Assigning cost responsibility to Osage Wind for the network upgrade on the PSO transmission system is just and reasonable because the upgrade would not be necessary but for the interconnection of the Generating Facility to AECI and the resultant impacts on the PSO and SPP transmission systems. Furthermore, Osage Wind's cost responsibility for the upgrade was determined in a manner consistent with the methodology prescribed in the Tariff.¹⁰

Ninth, Appendix B contains a form letter for the notification of completed construction of the network upgrades. This letter is consistent with the type of notification required for interconnection customers interconnecting to the SPP system.¹¹

Finally, the Revised Osage Wind FCA contains the following provisions that are consistent with, or similar to, the *pro forma* GIA: (1) Article 4 (Force Majeure); (2) Article 7 (Invoicing and Payments); (3) Article 8 (Assignment); (4) Article 9 (Limitation of Liability); (5) Article 10 (Default); (6) Article 13 (Confidentiality); (7) Article 14 (Information Access and Audit Rights); (8) Article 15 (Disputes); and (9) Article 18 (Representations and Warranties). Some of the aforementioned Articles contain slight variations from the *pro forma* GIA because the Revised Osage Wind FCA governs

¹⁰ See JOA Article 7.4., “Upgrades Associated with Generation Interconnections” (“Costs associated with transmission system upgrades required as a result of the reliability related impacts of requests for generation interconnection will be recovered under the terms of the tariff of the impacted Party or other controlling agreements and consistent with applicable federal and state regulatory policy.”)

¹¹ See *pro forma* GIA at Appendix E.

upgrades on an Affected System rather than an interconnection on SPP's transmission system. For example, some of provisions were modified to refer to the FCA instead of the GIA. Other variations remove terms from the *pro forma* GIA that are not applicable to an FCA. For example, the Parties removed Articles 6 (Testing and Inspection), 7 (Metering), and 9 (Operations) of the *pro forma* GIA because each of these Articles are not applicable to the FCA.

IV. Effective Date

SPP requests an effective date of April 16, 2012 for the Revised Osage Wind FCA. Therefore, pursuant to section 35.11 of the Commission's rules and regulations, 18 C.F.R. § 35.11, SPP requests a waiver of the Commission's 60-day notice requirement set forth at 18 C.F.R. § 35.3. Waiver is appropriate because the Revised Osage Wind FCA is being filed within 30 days of its requested effective date.¹² In addition, the Commission previously has granted waiver of the 60-day notice requirement for agreements not contained in the filing entities' Tariff when the agreements were filed within 30 days of the requested effective date.¹³

V. Service and Communication

SPP is serving a copy of this filing on the representatives for PSO and Osage Wind listed in the Revised Osage Wind FCA.

¹² See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,983-84, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (the Commission will grant waiver of the 60-day prior notice requirement "if service agreements are filed within 30 days after service commences."); see also 18 C.F.R. § 35.3(a)(2).

¹³ See October Letter Order; *Sw. Power Pool, Inc.*, 128 FERC ¶ 61,191 (2009) (Granting waiver of the 60-day prior notice requirement and conditionally accepting an Interim Large Generator Interconnection Agreement, which was not part of the SPP Tariff at the time, that was filed within 30 days of the requested effective date); *PJM Interconnection, L.L.C.*, Letter Order, Docket No. ER11-3645-000 (July 15, 2011) (Granting waiver of the 60-day prior notice requirement and accepting a Wholesale Market Participation Agreement, an agreement which is not part of the PJM Tariff, that was filed within 30 days of the requested effective date).

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SPP requests that all correspondence and communications with respect to this filing should be sent to, and that the Secretary include on the official service list, the following:

Heather Starnes, J.D.
Manager – Regulatory Policy
Southwest Power Pool, Inc.
415 North McKinley, #140 Plaza West
Little Rock, AR 72205
Telephone: (501) 614-3380
Fax: (501) 664-9553
hstarnes@spp.org

Carrie L. Bumgarner
Tyler R. Brown
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, DC 20005-3802
Telephone: (202) 393-1200
Fax: (202) 393-1240
bumgarner@wrightlaw.com
brown@wrightlaw.com

VI. Additional Information

A. Information Required by Section 35.13 of the Commission's Regulations, 18 C.F.R. § 35.13:

(1) Documents submitted with this filing:

In addition to this transmittal letter, SPP includes a copy of the Revised Osage Wind FCA with this filing and a copy of the Letter Agreement as Attachment A.

(2) Effective date:

As discussed above, SPP respectfully requests that the Commission accept the Revised Osage Wind FCA with an effective date of April 16, 2012.

(3) Service:

SPP is serving a copy of this filing on the representatives for the Parties in the Revised Osage Wind FCA.

(4) Basis of Rate:

All charges will be determined in accordance with the Tariff and the Revised Osage Wind FCA.

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VII. Conclusion

For the foregoing stated reasons, SPP requests that the Commission accept the Revised Osage Wind FCA effective April 16, 2012.

Respectfully submitted,

/s/ Tyler R. Brown

Carrie L. Bumgarner

Tyler R. Brown

**Attorneys for Southwest Power
Pool, Inc.**

Southwest Power Pool, Inc.
First Revised Service Agreement No. 2234

AFFECTED SYSTEMS' FACILITIES CONSTRUCTION AGREEMENT

Entered into by

Southwest Power Pool, Inc.,

And

Osage Wind, LLC

And

Public Service Company of Oklahoma

Entered into as of the 28th day of July, 2011

AFFECTED SYSTEMS' FACILITIES CONSTRUCTION AGREEMENT

THIS AFFECTED SYSTEMS' FACILITIES CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into as of the 28th day of July, 2011, by and among **Osage Wind, LLC**, organized and existing under the laws of the State of Delaware (the "Interconnection Customer"), the **Southwest Power Pool, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Arkansas (the "Transmission Provider") and **Public Service Company of Oklahoma**, a corporation organized under the laws of the State of Oklahoma (the "Transmission Owner"). Interconnection Customer, Transmission Owner, or Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Transmission Owner and Interconnection Customer each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, the Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Interconnection Customer intends to own, and operate, or manage the Interconnection Customer Interconnection Facilities relating to a 150 MW generating facility located in Osage County, Oklahoma (the "Generating Facility" or "Facility") with an expected Commercial Operation Date of August 1, 2012 pursuant to a duly executed Interconnection Agreement ("IA") between Interconnection Customer and Associated Electric Cooperative Inc. ("AECI"); and

WHEREAS, the IA provides for interconnection service to interconnect the Generating Facility with the transmission system of AECI member KAMO Electric Cooperative Inc. ("KAMO"), which system is adjacent to the Transmission System; and

WHEREAS, the KAMO transmission system is administered by AECI and is interconnected with the Transmission System on Transmission Owner's Shidler - OGE Osage transmission line; and

WHEREAS, the Transmission System is affected by the interconnection of the Generating Facility to the KAMO transmission system and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such interconnection as identified in the Affected System Generation Interconnection Study ASGI-2010-006 published by Transmission Provider in December, 2010 (the "ASGI Study"); and

WHEREAS, Interconnection Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Interconnection Customer for the purpose of facilitating the interconnection of the Generating Facility by the construction of necessary Network Upgrades to the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 or otherwise not defined in this Agreement shall have the meanings specified in the Transmission Provider Tariff:

- 1.1 Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.
- 1.2 Reserved.**
- 1.3 Reserved.**
- 1.4 Breach** shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.
- 1.5 Breaching Party** shall mean a Party that is in Breach of this Agreement.
- 1.6 Commercial Operation** shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.
- 1.7 Commercial Operation Date** of a unit shall mean the date on which the Generating Facility commences Commercial Operation pursuant to the provisions of the IA.
- 1.8 Confidential Information** shall mean any confidential, proprietary or trade secret information, including plans, specifications, patterns, procedures, designs, devices, lists, concepts, policies or compilations relating to the business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information may include, without limitation, information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by any of the Parties to another in connection with the Network Upgrades prior to the execution of this Agreement.

- 1.9 Default** shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 10 of this Agreement.
- 1.10 Effective Date** shall mean the date on which the Agreement is permitted to become effective by the Commission.
- 1.11 FERC** shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12 Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. Economic hardship is not considered a Force Majeure event.
- 1.13 Reserved**
- 1.14 Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.15 Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, Transmission Owner, or any affiliate thereof.
- 1.16 In-Service Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Network Upgrades to obtain back feed power.
- 1.17 Reserved.**
- 1.18 Reserved.**
- 1.19 Network Upgrades** shall mean the additions, modifications, and upgrades to the Transmission System as identified in the ASGI Study and listed in Appendix A.

- 1.20 Non-Breaching Party** shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.21 Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.22 Tariff** shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.23 Transmission System** shall mean the facilities owned by the Transmission Owner and controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** This Agreement shall become effective on the Effective Date.
- 2.2 Term.**
- 2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final payment , where applicable, by Interconnection Customer of the amount funded by Transmission Owner for Transmission Owner's design, procurement, construction and installation of the Network Upgrades provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Interconnection Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) days prior to the proposed termination date, provided that Interconnection Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the Commercial Operation Date for the Facility or the In-Service Date for the Network Upgrades is adjusted in accordance with the rules and procedures established by the Transmission Provider.
- 2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 10 and 11; provided, however, the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission

Owner may terminate this Agreement if Interconnection Customer is the Breaching Party and Interconnection Customer (i) has undertaken, in accordance with Article 10.1, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Interconnection Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) days allowed by Article 10.1, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) days for the amount of damage billed to Interconnection Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. Providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Interconnection Customer due to a Breach by Transmission Owner, Interconnection Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 15 to resolve any disputes related thereto. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

2.3 Regulatory Filing. In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as

a service agreement under the Transmission Provider Tariff. If Interconnection Customer has executed this Agreement or any amendment to this Agreement, Interconnection Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

- 2.4 Termination Obligations.** Upon any termination pursuant to this Agreement, Interconnection Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3 CONSTRUCTION OF NETWORK UPGRADES AND OPERATION OF THE GENERATING FACILITY

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Interconnection Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades identified in Appendix A and as shown in Exhibit A2. All Network Upgrades designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Conditions of Suspension. Interconnection Customer, upon written notice to Transmission Provider and Transmission Owner, may suspend, for a period not to exceed 18 months, work by Transmission Owner associated with the construction and installation of Transmission Owner's Network Upgrades required under this Agreement under the following terms and conditions:

- i. Construction of Network Upgrades that are required to provide Interconnection Service to other Generating Facilities and for which Interconnection Customer shares cost responsibility cannot be suspended pursuant to this Article 3.1.2.
- ii. If the suspension period begins later than or extends beyond six months following the Effective Date of the IA, the Interconnection Customer shall provide to the Transmission Provider security in the form described under Article

3.3 in an amount equal to the greater of:

- a. the Interconnection Customer's allocated share of Network Upgrade(s) as identified in Appendix A of this Agreement; or
- b. \$5,000,000 if the Generating Facility is greater than or equal to 100 MW; or
- c. \$2,500,000 if the Generating Facility is greater than or equal to 50 MW and less than 100 MW; or
- d. \$1,000,000 if the Generating Facility is less than 50 MW; or
- e. \$500,000 if the Generating Facility is less than or equal to 2 MW.

iii. In the event that this Agreement is terminated under this Article 3.1.2, the Transmission Provider shall retain the security provided pursuant to Article 3.1.2.1 (ii) in the amount required to meet Interconnection Customer's obligations to Transmission Owner pursuant to this Agreement. Any difference between the security provided and Interconnection Customer's obligations shall be settled pursuant to Article 7.

iv. In the event Interconnection Customer suspends work by Transmission Owner required under this Agreement pursuant to this Article 3.1.2 and has not requested Transmission Owner to resume the work required under this Agreement on or before the expiration of 18 months from the date of suspension, this Agreement shall be deemed terminated unless Article 4 applies.

v. In the event Interconnection Customer suspends work by Transmission Owner required under this Agreement pursuant to this Article 3.1.2 and has not complied with the requirements of Article 3.1.2.1(ii) on or before the later of the expiration of 6 months following the effective date of the IA or the date the suspension is requested, this Agreement shall be deemed terminated by the Interconnection Customer.

vi. In the event Interconnection Customer suspends work by Transmission Owner required under this Agreement pursuant to this Article 3.1.2 the Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Owner's safety and reliability criteria. Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Owner and Transmission Provider (i) have incurred pursuant to this Agreement prior to the suspension and (ii) incur in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Owner shall obtain Interconnection

Customer's authorization to do so. Transmission Owner and Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 7 and shall use due diligence to minimize its costs.

vii. In the event Interconnection Customer provides written notice to resume work for those facilities for which work has been suspended pursuant to this Article 3.1.2, the Interconnection Customer shall receive a refund, including interest, of any payments provided in accordance with Article 3.1.2.1(ii) in excess of the sum of Interconnection Customer's allocated share of Network Upgrade(s) costs and any costs incurred under Article 3.1.2.1(vi) within 30 days of the date of such notice.

3.1.2.2 Exemptions. The Interconnection Customer shall be exempt from the payments described under Article 3.1.2.1(ii)(b), 3.1.2.1(ii)(c) and 3.1.2.1(ii)(d) if the following occurs or Suspension is requested for the following reasons:

- i. Construction of a Network Upgrade or the Generating Facility is prevented by order of a Governmental Authority; or
- ii. Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction of a Network Upgrade.

3.1.2.3 Termination in the Event of a Material Modification. In the event Interconnection Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its Commercial Operation Date by three (3) years or more, this Agreement shall be deemed terminated unless Interconnection Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Interconnection Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades upon the occurrence of either a Breach that Interconnection Customer is unable to cure pursuant to Article 10 or an Event of Default pursuant to Article 10. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 10.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 11. In such events, Interconnection Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Design Commencement. Transmission Owner shall commence design of the Network Upgrades as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

3.1.3.1 Transmission Owner has received written authorization to proceed with design from Interconnection Customer by the date specified in Appendix A;

3.1.3.2 Interconnection Customer has paid the amounts indicated in Milestone 4 in Appendix A; and

3.1.3.3 Interconnection Customer has provided security to Transmission Provider in accordance with Article 3.3 by the dates specified in Appendix A, Milestones.

3.1.4 Equipment Procurement and Construction Commencement. Transmission Owner shall procure necessary equipment and commence construction of the Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

3.1.4.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

3.1.4.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Network Upgrades;

3.1.4.3 Transmission Owner has received written authorization to proceed with equipment procurement and construction from Interconnection Customer by the date specified in Appendix A;

3.1.4.4 Interconnection Customer has paid the amounts indicated in Milestone 7 in Appendix A; and

3.1.4.5 Interconnection Customer has provided security to Transmission Provider in accordance with Article 3.3 by the dates specified in Appendix A.

3.1.5 Lands of Other Property Owners. If any part of the Transmission Owner's Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Owner, the Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Network Upgrades upon such property.

- 3.1.6 Construction Status.** Transmission Owner shall keep Interconnection Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Interconnection Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Interconnection Customer determines that the completion of the Network Upgrades will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.
- 3.1.7 Timely Completion.** Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades Facilities in accordance with the schedule set forth in Appendix A. If any event occurs that will affect the time for completion of the Network Upgrades, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Interconnection Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) days of such notice, convene a technical meeting with Interconnection Customer and Transmission Owner to evaluate the alternatives available to Interconnection Customer. Transmission Owner and/or Transmission Provider shall also make available to Interconnection Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Interconnection Customer to evaluate alternatives. Transmission Owner shall, at Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Interconnection Customer authorizes such actions and the costs associated therewith in advance.
- 3.1.8 Generating Facility Operation.** Interconnection Customer agrees not to operate the Generating Facility while KAMO's transmission line to Fairfax is connected to Transmission Owner's system through the existing interconnection as shown in Exhibit A1. Transmission Owner shall provide notice to Interconnection Customer substantially in the form of Appendix B when the Network Upgrades have been placed in service and Interconnection Customer can operate the Generating Facility through the Network Upgrades.

3.2 Interconnection Costs and Credits.

- 3.2.1 Costs.** Interconnection Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades, as identified in Appendix A.

3.2.2 Credits.

3.2.2.1 Credits for Amounts Advanced for Network Upgrades. Interconnection Customer shall be entitled to credits in accordance with Attachment Z2 of the Tariff for any Network Upgrades including any tax gross-up or other tax-related payments associated with Network Upgrades.

3.2.2.2 Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain transmission credits for transmission service that is not associated with the Generating Facility.

3.3 Provision of Security. At least thirty (30) calendar days prior to the commencement of the procurement, installation, or construction of a discrete portion of Network Upgrades as defined in Appendix A of this Agreement, Interconnection Customer shall provide Transmission Provider a letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 17.2. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Network Upgrades as defined in Appendix A of this Agreement and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider or Transmission Owner for these purposes. If Interconnection Customer requests suspension pursuant to Article 3.1.2, Interconnection Customer may be required to provide Transmission Provider security in the form described above for its allocated share of Network Upgrade(s) as defined in Appendix A of this Agreement. In addition, the letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

3.4 Taxes.

3.4.1 Interconnection Customer Payments Not Taxable. The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Owner for the installation of the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

3.4.2 Representations and Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of

any property transferred to Transmission Owner for the Network Upgrades will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Network Upgrades that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Owner's request, Interconnection Customer shall provide Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Owner represents and covenants that the cost of the Network Upgrades paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

3.4.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Owner. Notwithstanding Article 3.4.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Owner from the cost consequences of any current tax liability imposed against Transmission Owner as the result of payments or property transfers made by Interconnection Customer to Transmission Owner under this Agreement for Network Upgrades, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Owner.

Transmission Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this Agreement unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Interconnection Customer to provide security for the Network Upgrades, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 3.4. Interconnection Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 3.4.4, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event

and the payment of any related indemnification obligations as contemplated by this Article 3.4.

3.4.4 Tax Gross-Up Amount. Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 3.4 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the Parties, this means that Interconnection Customer will pay Transmission Owner, in addition to the amount paid for the Network Upgrades, and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Transmission Owner as a result of payments or property transfers made by Interconnection Customer to Transmission Owner under this Agreement (without regard to any payments under this Article 3.4) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 3.4.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$.

3.4.5 Private Letter Ruling or Change or Clarification of Law. At Interconnection Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Owner under this Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Owner shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Owner shall allow

Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

- 3.4.6 Subsequent Taxable Events.** If, within 10 years from the date on which the relevant Network Upgrades are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 3.4.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Transmission Owner retains ownership of the Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Owner, calculated using the methodology described in Article 3.4.4 and in accordance with IRS Notice 90-60.
- 3.4.7 Contests.** In the event any Governmental Authority determines that Transmission Owner's receipt of payments or property constitutes income that is subject to taxation, Transmission Owner shall notify Interconnection Customer, in writing, within thirty (30) calendar days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or

otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 3.4, whether or not it has received such a determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Owner shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Owner may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Owner, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Interconnection Customer's

consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Owner for the tax at issue in the contest.

3.4.8 Refund. In the event that (a) a private letter ruling is issued to Transmission Owner which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Owner under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Owner in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Owner under the terms of this Agreement is not taxable to Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Owner are not subject to federal income tax, or (d) if Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Owner pursuant to this Agreement, Transmission Owner shall promptly refund to Interconnection Customer the following:

- (i) any payment made by Interconnection Customer under this Article 3.4 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,
- (ii) interest on any amount paid by Interconnection Customer to Transmission Owner for such taxes which Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR §35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Transmission Owner refunds such payment to Interconnection Customer, and
- (iii) with respect to any such taxes paid by Transmission Owner, any refund or credit Transmission Owner receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Owner for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Owner to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Owner will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Owner has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Owner's Network Upgrades.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

3.4.9 Taxes Other Than Income Taxes. Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Interconnection Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner.

3.5 Tax Status. All Parties shall cooperate with each other to maintain their tax status. Nothing in this Agreement is intended to adversely affect any Party's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

ARTICLE 4 FORCE MAJEURE

4.1 No Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 3), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 5 INFORMATION REPORTING

5.1 Information Reporting Obligations. Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.

- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply.

ARTICLE 6

Reserved

ARTICLE 7 INVOICING AND PAYMENTS

- 7.1 Invoice.** Within six months after completion of the construction of the Network Upgrades, the Interconnection Customer shall receive an invoice of the final cost due under this Agreement, including any applicable cost due to termination, which shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Interconnection Customer shall receive a refund of any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 7.2 Payment.** The invoice shall be rendered to the Interconnection Customer at the address specified in Article 16. The Interconnection Customer shall pay the invoice within thirty (30) Calendar Days of receipt. Such payment shall be made in immediately available funds payable to the Transmission Owner, or by wire transfer to a bank named and account designated by the Transmission Owner. Payment of invoices by the Interconnection Customer will not constitute a waiver of any rights or claims the Interconnection Customer may have under this Agreement.
- 7.3 Disputes.** In the event of a billing dispute between the Parties, Transmission Owner, and Transmission Provider shall continue to perform the activities required under this Agreement as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Owner may provide notice to Interconnection Customer of a Default pursuant to Article 10. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 8 ASSIGNMENT

- 8.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Transmission Owner may assign this Agreement without the consent of the other Parties to its affiliate AEP Oklahoma Transmission Company, Inc.; and provided further that Interconnection Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Interconnection Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 3.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 9 LIMITATION OF LIABILITY

- 9.1 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability.

ARTICLE 10 DEFAULT

- 10.1 General.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of another Party. Upon a Breach, the Non-Breaching Party shall give written notice of such Breach to the Breaching Party. Except as provided in Article 10.2, the Breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently

complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

10.2 Right to Terminate. If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the Non-Breaching Party shall have the right to declare a Default and terminate this Agreement according to the provisions of Article 11.2. Until such time as either the Default is cured or the Agreement is terminated, the Non-Breaching Party shall be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, shall be entitled to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

ARTICLE 11 TERMINATION OF AGREEMENT

11.1 Expiration of Term. Except as otherwise specified in this Article 11, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

11.2 Disposition of Facilities Upon Termination of Agreement. Subject to Article 2.2 and the limitations set forth in Article 11.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) if applicable, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

11.2.1 Transmission Provider and Transmission Owner Obligations. Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades;
- (b) may keep in place any portion of the Network Upgrades already constructed and installed; and,
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).

11.2.2 Interconnection Customer Obligations. Upon billing by Transmission Owner, Interconnection Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or

permitted by Article 11.2.1 and for the cost of any Network Upgrades described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Interconnection Customer shall pay these costs pursuant to Article 7.2 of this Agreement.

11.2.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades, Transmission Owner may, at its option, retain any portion of such Network Upgrades not cancelled or returned in accordance with Article 11.2.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades. To the extent that Interconnection Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Interconnection Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Interconnection Customer such facilities as soon as practicable after Interconnection Customer's payment for such facilities.

11.3 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 13.

ARTICLE 12 RESOURCES

12.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of its affiliates, consultants, contractors, and suppliers, as it deems appropriate, to perform its obligations under this Agreement.

12.1.1 Responsibility of Principal. The use of any affiliates, consultants, contractors and suppliers shall not relieve the hiring Party of any of its obligations under this Agreement.

12.1.2 No Limitation by Insurance. The obligations under this Article 12 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 13 CONFIDENTIALITY

13.1 Confidentiality.

13.1.1 Designation. If requested by any Party, a Party shall provide in writing, the basis for asserting that the information referred to in this Article 13 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.1.2 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 13, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

13.1.3 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 13.1.8 of the Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.1.4 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 13. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 13.

13.1.5 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses another other Party. The disclosure by any

Party to another Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.1.6 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.1.7 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

13.1.8 Order of Disclosure. If a court or a Governmental Authority or entity with the right, power, and apparent authority to do so requests or requires a Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.1.9 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) calendar days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

13.1.10 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 13. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 13, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 13, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary

for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 13.

13.1.11 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article 13 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying another Party to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner, if consistent with the applicable state rules and regulations.

13.1.12 Subject to the exception in Article 13.1.11, any information that a Party claims is competitively sensitive, commercial or financial information under this Agreement ("Confidential Information") shall not be disclosed by another Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 14
INFORMATION ACCESS AND AUDIT RIGHTS

14.1 Audit Rights. Subject to the requirements of confidentiality under Article 13 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades shall be subject to audit during the period of this Agreement and for a period of twenty-four months following Transmission Owner’s issuance of a final invoice in accordance with Article 7.1. Interconnection Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 14.1 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement. Any information provided by Transmission Owner under this Article 14 shall be considered “Confidential Information” subject to the confidentiality provisions of Section 13.1 regardless of whether such information is designated as “confidential”.

ARTICLE 15
DISPUTES

15.1 Submission. In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, the Parties agree to resolve such dispute using the dispute resolution procedures of the Tariff.

ARTICLE 16
NOTICES

16.1 General. Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

Southwest Power Pool, Inc.
Attn: Legal Department
415 N. McKinley, Ste. 140
Little Rock, AR 72205
Email: mharward@spp.org

To Transmission Owner:

Manager, Transmission and Interconnection Services
American Electric Power Service Corporation
212 East 6th Street
Tulsa, OK 74119
Telephone: 918-599-2723
Email: rlpennybaker@aep.com

With copies to:

Managing Director, Transmission Planning and Business Development
American Electric Power Service Corporation
700 Morrison Road
Gahanna, OH 43230
Telephone: 614-552-1600
Email: rwbradish@aep.com

To Interconnection Customer:

Osage Wind, LLC
Robert M. Vosberg, P.E.
2920 Marketplace Drive, Suite 101
Madison, WI 53719
Telephone (608) 819-2322
Email: rvosberg@windcapitalgroup.com

16.2 Billings and Payments. Billings and payments shall be sent to the addresses shown below unless otherwise agreed to by the Parties.

To Transmission Owner:

Send payments for construction invoices to the address specified on the invoice.

To Transmission Provider:

Southwest Power Pool, Inc.
Attn: Accounting
415 N. McKinley, Ste. 140
Little Rock, AR 72205
Email: rgay@spp.org

To Interconnection Customer:

Osage Wind, LLC
Randy Prior
Director, Accounting
1430 Washington Avenue, Suite 300
St. Louis, MO 63103
Telephone (314) 685-3034
Email: rprior@windcapitalgroup.com

ARTICLE 17 MISCELLANEOUS

- 17.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 17.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the Network Upgrades are located without regard to its conflicts of law principles.
- 17.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 17.4 Reserved.**
- 17.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Interconnection Customer, Transmission Owner, and Transmission Provider.
- 17.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 17.7 Binding Effect; No Third Party Beneficiaries.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties

hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.

- 17.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 17.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.
- 17.10 No Right to Transmission Service.** This Agreement does not in and of itself convey transmission service rights to Interconnection Customer or Transmission Owner; and nothing contained herein is intended to provide any obligation on the part of Transmission Provider to grant transmission service pursuant to the Tariff to the other Parties.

ARTICLE 18 REPRESENTATIONS AND WARRANTIES

- 18.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 18.1.1. Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of their organization as stated in the preamble of this Agreement.
- 18.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 18.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.

18.1.4 Consent and Approval. That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

18.1.5 Solvency. That such Party is financially solvent.

**[The remainder of this page is intentionally blank.
The next page is the signature page.]**

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Southwest Power Pool, Inc.

By: /s/Carl Monroe

Name: Carl Monroe

Title: EVP & COO

Public Service Company of Oklahoma

By: /s/ Michael Heyeck

Name: Michael Heyeck

Title: Vice President

Osage Wind, LLC

By: /s/ Ciaran O'Brien

Name: Ciaran O'Brien

Title: Chief Executive Officer

Affected Systems' Facilities Construction Agreement

APPENDIX A

**NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,
TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY
PAYMENT SCHEDULE**

This Appendix A is a part of the Affected Systems' Facilities Construction Agreement between Interconnection Customer, Transmission Owner, and Transmission Provider.

1.1 Network Upgrades to be installed by Transmission Owner.

- Replace existing 138 kV circuit breaker at Shidler substation with a 4-breaker ring. Provide a terminal for KAMO's 138 kV line from Remington Station.
- Replace ground switch with circuit switcher.
- Move terminal for OGE Osage line.
- Replace relay panels on the OGE Osage and Mound Road line terminals
- 138 kV meter transformers and meter at Shidler Station
- Install relay panel, line trap and RTU at Mound Road station

○ Estimated cost \$5,728,000

1.2 Financial Security.

The amount of financial security required in Section 3.3 is \$0.00.

1.3 Milestone and Payment Schedule.

MILESTONE NUMBER	DESCRIPTION	Responsible Party	DATE (Months After Execution of Amended Agreement)
1	Provide authorization to proceed with design, procurement and Construction of the Network Upgrades	Interconnection Customer	07-28-2011
2	Provide Security per Article 3.3 equal to the, total estimated cost of the Network Upgrades Appendix A	Interconnection Customer	n/a
3	Full execution of Amended Facilities Agreement	All	0
4	Send Invoice #1 to Interconnection Customer \$500,000	Transmission Owner	0
5	Make Payment #1 to Transmission Owner - \$500,000 (per Sec. 3.1.3.2)	Interconnection Customer	1
6	Send Invoice #2 to Interconnection Customer \$1,500,000	Transmission Owner	1
7	Make Payment #2 to Transmission Owner - \$1,500,000	Interconnection Customer	2
8	Send Invoice #3 to Interconnection Customer - \$1,500,000	Transmission Owner	3
9	Make Payment #3 to Transmission Owner \$1,500,000 (per Sec. 3.1.4.4)	Interconnection Customer	4
10	Obtain Governmental Authorizations required for construction	Transmission Owner	5
11	Send Invoice #4 to Interconnection Customer - \$1,500,000	Transmission Owner	6
12	Make Payment #4 to Transmission Owner \$1,500,000	Interconnection Customer	7
13	Send Invoice #5 to Interconnection Customer - \$728,000	Transmission Owner	9
14	Make Payment #5 to Transmission Owner \$728,000	Interconnection Customer	10
15	Complete and energize the Network Upgrades	Transmission Owner	13
16	Connect Interconnection Customer's transmission line to Transmission Owner's Shidler Station	Transmission Owner	13
17	In-Service Date for Network Upgrades – Provide notice in the form of Appendix B to Interconnection Customer.	Transmission Owner	13
18	Issue Final Invoice (per Sec. 7.2) to True-up total actual cost of the Network Upgrades	Transmission Owner	17
19	Final payment to Transmission Owner	Interconnection Customer	18

Exhibit A1
One-Line Diagram of the Existing KAMO Shidler Interconnection
with the Transmission System

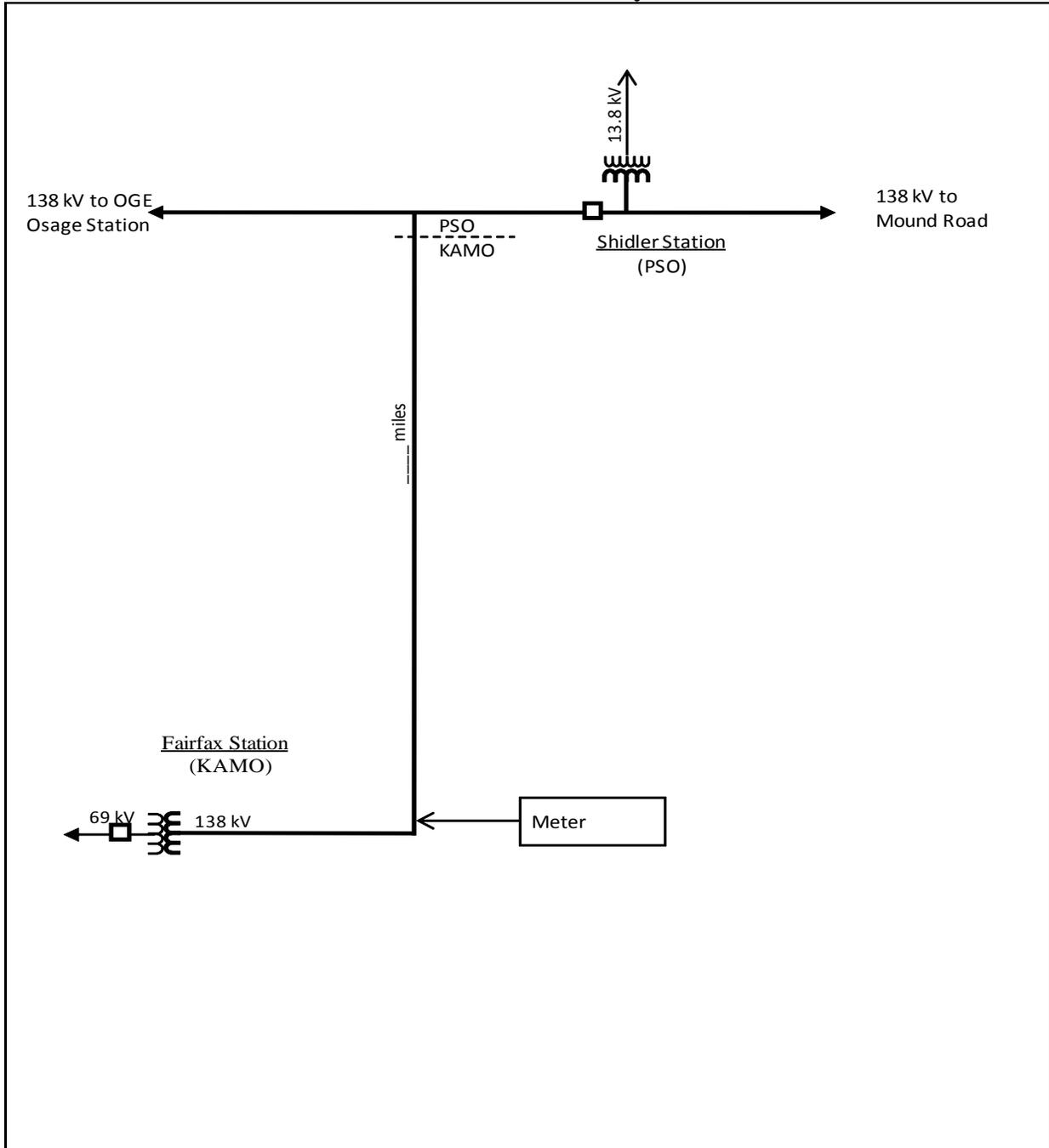
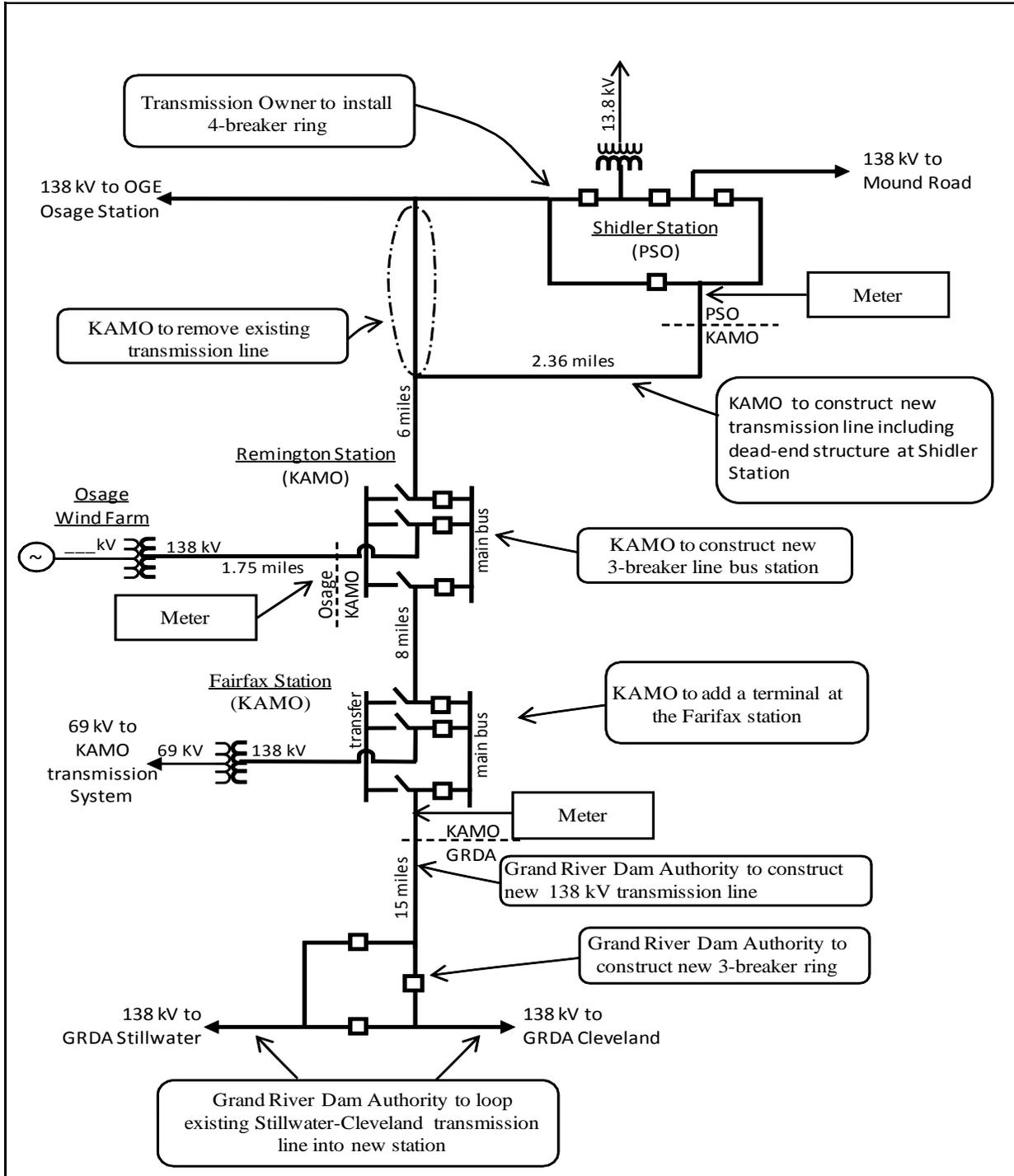


Exhibit A2 One-Line Diagram of Network Upgrades and Generating Facility



Affected Systems' Facilities Construction Agreement
APPENDIX B
NOTIFICATION OF COMPLETED CONSTRUCTION

[Date]

-

-

Interconnection Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade

Dear [Name or Title]:

This letter is sent pursuant to the Affected Systems' Facilities Construction Agreement among Public Service Company of Oklahoma, Osage Wind, LLC, and the Southwest Power Pool, Inc., dated July 28, 2011.

On [Date], Transmission Owner substantially completed work on the Network Upgrades required to facilitate the safe and reliable interconnection and operation of Interconnection Customer's Generating Facility. Transmission Owner confirms that the Network Upgrades are in service.

Thank you.

[Signature]

[Transmission Owner Representative]

Southwest Power Pool, Inc.
First Revised Service Agreement No. 2234

AFFECTED SYSTEMS' FACILITIES CONSTRUCTION AGREEMENT

Entered into by

Southwest Power Pool, Inc.,

And

Osage Wind, LLC

And

Public Service Company of Oklahoma

Entered into as of the 28th day of July, 2011

AFFECTED SYSTEMS' FACILITIES CONSTRUCTION AGREEMENT

THIS AFFECTED SYSTEMS' FACILITIES CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into as of the 28th day of July, 2011, by and among **Osage Wind, LLC**, organized and existing under the laws of the State of Delaware (the "Interconnection Customer"), the **Southwest Power Pool, Inc.**, a non-profit, non-stock corporation organized and existing under the laws of the State of Arkansas (the "Transmission Provider") and **Public Service Company of Oklahoma**, a corporation organized under the laws of the State of Oklahoma (the "Transmission Owner"). Interconnection Customer, Transmission Owner, or Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Transmission Owner and Interconnection Customer each owns electric facilities and is engaged in generation, transmission, distribution and/or sale of electric power and energy; and

WHEREAS, the Transmission Provider has functional control of the operations of the Transmission System, as defined herein, and is responsible for providing transmission and interconnection service on the transmission facilities under its control; and

WHEREAS, Interconnection Customer intends to own, and operate, or manage the Interconnection Customer Interconnection Facilities relating to a 150 MW generating facility located in Osage County, Oklahoma (the "Generating Facility" or "Facility") with an expected Commercial Operation Date of August 1, 2012 pursuant to a duly executed Interconnection Agreement ("IA") between Interconnection Customer and Associated Electric Cooperative Inc. ("AECI"); and

WHEREAS, the IA provides for interconnection service to interconnect the Generating Facility with the transmission system of AECI member KAMO Electric Cooperative Inc. ("KAMO"), which system is adjacent to the Transmission System; and

WHEREAS, the KAMO transmission system is administered by AECI and is interconnected with the Transmission System on Transmission Owner's Shidler - OGE Osage transmission line; and

WHEREAS, the Transmission System is affected by the interconnection of the Generating Facility to the KAMO transmission system and additions, modifications and upgrades must be made to certain existing facilities of the Transmission System to accommodate such interconnection as identified in the Affected System Generation Interconnection Study ASGI-2010-006 published by Transmission Provider in December, 2010 (the "ASGI Study"); and

WHEREAS, Interconnection Customer has requested, and Transmission Provider and Transmission Owner have agreed, to enter into this Agreement with Interconnection Customer for the purpose of facilitating the interconnection of the Generating Facility by the construction of necessary Network Upgrades to the Transmission System;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Wherever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1. Terms used in this Agreement with initial capitalization not defined in this Article 1 or otherwise not defined in this Agreement shall have the meanings specified in the Transmission Provider Tariff:

- 1.1 Applicable Laws and Regulations** shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.
- 1.2 Reserved.**
- 1.3 Reserved.**
- 1.4 Breach** shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.
- 1.5 Breaching Party** shall mean a Party that is in Breach of this Agreement.
- 1.6 Commercial Operation** shall mean the status of a Generating Facility that has commenced generating electricity for sale, excluding electricity generated during Trial Operation.
- 1.7 Commercial Operation Date** of a unit shall mean the date on which the Generating Facility commences Commercial Operation pursuant to the provisions of the IA.
- 1.8 Confidential Information** shall mean any confidential, proprietary or trade secret information, including plans, specifications, patterns, procedures, designs, devices, lists, concepts, policies or compilations relating to the business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise. Confidential Information may include, without limitation, information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by any of the Parties to another in connection with the Network Upgrades prior to the execution of this Agreement.

- 1.9 Default** shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 10 of this Agreement.
- 1.10 Effective Date** shall mean the date on which the Agreement is permitted to become effective by the Commission.
- 1.11 FERC** shall mean the Federal Energy Regulatory Commission, also known as Commission, or its successor.
- 1.12 Force Majeure** shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. Economic hardship is not considered a Force Majeure event.
- 1.13 Reserved**
- 1.14 Good Utility Practice** shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known to the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.
- 1.15 Governmental Authority** shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, Transmission Owner, or any affiliate thereof.
- 1.16 In-Service Date** shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Network Upgrades to obtain back feed power.
- 1.17 Reserved.**
- 1.18 Reserved.**
- 1.19 Network Upgrades** shall mean the additions, modifications, and upgrades to the Transmission System as identified in the ASGI Study and listed in Appendix A.

- 1.20 Non-Breaching Party** shall mean a Party that is not in Breach of this Agreement with regard to a specific event of Breach by another Party.
- 1.21 Reasonable Efforts** shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.
- 1.22 Tariff** shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.
- 1.23 Transmission System** shall mean the facilities owned by the Transmission Owner and controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

ARTICLE 2 TERM OF AGREEMENT

- 2.1 Effective Date.** This Agreement shall become effective on the Effective Date.
- 2.2 Term.**
- 2.2.1 General.** This Agreement shall become effective as provided in Article 2.1 and shall continue in full force and effect until the earlier of (i) the final payment , where applicable, by Interconnection Customer of the amount funded by Transmission Owner for Transmission Owner's design, procurement, construction and installation of the Network Upgrades provided in Appendix A; (ii) the Parties agree to mutually terminate this Agreement; (iii) earlier termination is permitted or provided for under Appendix A of this Agreement; or (iv) Interconnection Customer terminates this Agreement after providing Transmission Provider and Transmission Owner with written notice at least sixty (60) days prior to the proposed termination date, provided that Interconnection Customer has no outstanding contractual obligations to Transmission Provider or Transmission Owner under this Agreement. No termination of this Agreement shall be effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination. The term of this Agreement may be adjusted upon mutual agreement of the Parties, if the Commercial Operation Date for the Facility or the In-Service Date for the Network Upgrades is adjusted in accordance with the rules and procedures established by the Transmission Provider.
- 2.2.2 Termination Upon Default.** In the event of a Default by a Party, the Non-Breaching Party or Parties shall have the termination rights described in Articles 10 and 11; provided, however, the Default does not pose a threat to the reliability of the Transmission System, neither Transmission Provider nor Transmission

Owner may terminate this Agreement if Interconnection Customer is the Breaching Party and Interconnection Customer (i) has undertaken, in accordance with Article 10.1, to cure the Breach that led to the Default and has failed to cure the Breach for reasons other than Interconnection Customer's failure to diligently commence reasonable and appropriate steps to cure the Breach within the thirty (30) days allowed by Article 10.1, and (ii) compensates Transmission Provider or Transmission Owner within thirty (30) days for the amount of damage billed to Interconnection Customer by Transmission Provider or Transmission Owner for any damages, including costs and expenses, incurred by Transmission Provider or Transmission Owner as a result of such Default. Providing the Default does not pose a threat to the reliability of the Transmission System, the Non-Breaching Party or Parties shall not terminate this Agreement provided that the Breaching Party provided an assurance of payment acceptable to the Non-Breaching Party, and pays any applicable damages.

2.2.3 Consequences of Termination. In the event of a termination by any Party, other than a termination by Interconnection Customer due to a Breach by Transmission Owner, Interconnection Customer must pay Transmission Owner all amounts still due and payable for construction and installation of the Network Upgrades (including, without limitation, any equipment ordered related to such construction), plus all out-of-pocket expenses incurred by Transmission Owner in connection with the construction and installation of the Network Upgrades, through the date of termination, plus any actual costs which Transmission Owner (A) reasonably incurs in winding up work and construction demobilization and (B) reasonably incurs to ensure the safety of persons and property and the integrity and safe and reliable operation of the Transmission System. Transmission Owner agrees to use Reasonable Efforts to minimize such costs.

2.2.4 Material Adverse Change. In the event of a material change in law or regulation that adversely affects, or may reasonably be expected to adversely affect a Party's rights and/or obligations under this Agreement, the Parties shall negotiate in good faith any amendments to this Agreement necessary to adapt the terms of this Agreement to such change in law or regulation, and Transmission Provider shall file such amendments with FERC. If, within sixty (60) days after the occurrence of any event described in this Article 2.2.4, the Parties are unable to reach agreement as to any necessary amendments, the Parties may proceed under Article 15 to resolve any disputes related thereto. If a Party is unable to fully perform this Agreement due to the occurrence of an event described in this Article 2.2.4 and such inability is not based on economic reasons, such Party shall not be deemed to be in Default of its obligations under this Agreement, provided that such Party is seeking dispute resolution under Article 14 or before FERC, to the extent that (i) such Party is unable to perform as a result of such an event and (ii) such Party acts in accordance with its obligations under this Article 2.2.4.

2.3 Regulatory Filing. In accordance with Applicable Laws and Regulations, Transmission Provider shall file this Agreement, and any amendment to this Agreement with FERC as

a service agreement under the Transmission Provider Tariff. If Interconnection Customer has executed this Agreement or any amendment to this Agreement, Interconnection Customer shall not protest this Agreement or the amendment, shall reasonably cooperate with Transmission Provider with respect to such filing and shall provide any information, including the rendering of testimony or pleadings, as applicable, reasonably requested by Transmission Provider to the extent reasonably needed to comply with applicable regulatory requirements.

- 2.4 Termination Obligations.** Upon any termination pursuant to this Agreement, Interconnection Customer shall be responsible for the payment of all costs or other contractual obligations incurred prior to the termination date including previously incurred capital costs, penalties for early termination, costs of removal and site restoration.

ARTICLE 3 CONSTRUCTION OF NETWORK UPGRADES AND OPERATION OF THE GENERATING FACILITY

3.1 Construction.

3.1.1 Transmission Owner Obligations. Transmission Owner shall (or shall cause such action to) design, procure, construct and install, and Interconnection Customer shall pay, consistent with Article 3.2, the cost of, all Network Upgrades identified in Appendix A and as shown in Exhibit A2. All Network Upgrades designed, procured, constructed and installed by Transmission Owner pursuant to this Agreement shall satisfy all requirements of applicable safety and/or engineering codes, including those requirements of Transmission Owner and Transmission Provider, and comply with Good Utility Practice, and further, shall satisfy all Applicable Laws and Regulations.

3.1.2 Suspension of Work.

3.1.2.1 Conditions of Suspension. Interconnection Customer, upon written notice to Transmission Provider and Transmission Owner, may suspend, for a period not to exceed 18 months, work by Transmission Owner associated with the construction and installation of Transmission Owner's Network Upgrades required under this Agreement under the following terms and conditions:

- i. Construction of Network Upgrades that are required to provide Interconnection Service to other Generating Facilities and for which Interconnection Customer shares cost responsibility cannot be suspended pursuant to this Article 3.1.2.
- ii. If the suspension period begins later than or extends beyond six months following the Effective Date of the IA, the Interconnection Customer shall provide to the Transmission Provider security in the form described under Article

3.3 in an amount equal to the greater of:

- a. the Interconnection Customer's allocated share of Network Upgrade(s) as identified in Appendix A of this Agreement; or
- b. \$5,000,000 if the Generating Facility is greater than or equal to 100 MW; or
- c. \$2,500,000 if the Generating Facility is greater than or equal to 50 MW and less than 100 MW; or
- d. \$1,000,000 if the Generating Facility is less than 50 MW; or
- e. \$500,000 if the Generating Facility is less than or equal to 2 MW.

iii. In the event that this Agreement is terminated under this Article 3.1.2, the Transmission Provider shall retain the security provided pursuant to Article 3.1.2.1 (ii) in the amount required to meet Interconnection Customer's obligations to Transmission Owner pursuant to this Agreement. Any difference between the security provided and Interconnection Customer's obligations shall be settled pursuant to Article 7.

iv. In the event Interconnection Customer suspends work by Transmission Owner required under this Agreement pursuant to this Article 3.1.2 and has not requested Transmission Owner to resume the work required under this Agreement on or before the expiration of 18 months from the date of suspension, this Agreement shall be deemed terminated unless Article 4 applies.

v. In the event Interconnection Customer suspends work by Transmission Owner required under this Agreement pursuant to this Article 3.1.2 and has not complied with the requirements of Article 3.1.2.1(ii) on or before the later of the expiration of 6 months following the effective date of the IA or the date the suspension is requested, this Agreement shall be deemed terminated by the Interconnection Customer.

vi. In the event Interconnection Customer suspends work by Transmission Owner required under this Agreement pursuant to this Article 3.1.2 the Transmission System shall be left in a safe and reliable condition in accordance with Good Utility Practice and Transmission Owner's safety and reliability criteria. Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Owner and Transmission Provider (i) have incurred pursuant to this Agreement prior to the suspension and (ii) incur in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Owner cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Owner shall obtain Interconnection

Customer's authorization to do so. Transmission Owner and Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 7 and shall use due diligence to minimize its costs.

vii. In the event Interconnection Customer provides written notice to resume work for those facilities for which work has been suspended pursuant to this Article 3.1.2, the Interconnection Customer shall receive a refund, including interest, of any payments provided in accordance with Article 3.1.2.1(ii) in excess of the sum of Interconnection Customer's allocated share of Network Upgrade(s) costs and any costs incurred under Article 3.1.2.1(vi) within 30 days of the date of such notice.

3.1.2.2 Exemptions. The Interconnection Customer shall be exempt from the payments described under Article 3.1.2.1(ii)(b), 3.1.2.1(ii)(c) and 3.1.2.1(ii)(d) if the following occurs or Suspension is requested for the following reasons:

- i. Construction of a Network Upgrade or the Generating Facility is prevented by order of a Governmental Authority; or
- ii. Transmission Owner or Transmission Provider determines that a Force Majeure event prevents construction of a Network Upgrade.

3.1.2.3 Termination in the Event of a Material Modification. In the event Interconnection Customer suspends the performance of work by Transmission Owner pursuant to this Article 3.1.2 and modifies its Commercial Operation Date by three (3) years or more, this Agreement shall be deemed terminated unless Interconnection Customer demonstrates that the change is not a Material Modification under FERC precedent.

3.1.2.4 Right to Suspend Due to Default. Transmission Owner reserves the right, upon written notice to Interconnection Customer, to suspend, at any time, work by Transmission Owner and the incurrence of additional expenses associated with the construction and installation of the Network Upgrades upon the occurrence of either a Breach that Interconnection Customer is unable to cure pursuant to Article 10 or an Event of Default pursuant to Article 10. Any form of suspension by Transmission Owner shall not be barred by Articles 2.2.2, 2.2.3 or 10.2, nor shall it affect Transmission Owner's right to terminate the work or this Agreement pursuant to Article 11. In such events, Interconnection Customer shall be responsible for costs which Transmission Owner incurs as set forth in Article 2.2.3.

3.1.3 Design Commencement. Transmission Owner shall commence design of the Network Upgrades as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

3.1.3.1 Transmission Owner has received written authorization to proceed with design from Interconnection Customer by the date specified in Appendix A;

3.1.3.2 Interconnection Customer has paid the amounts indicated in Milestone 4 in Appendix A; and

3.1.3.3 Interconnection Customer has provided security to Transmission Provider in accordance with Article 3.3 by the dates specified in Appendix A, Milestones.

3.1.4 Equipment Procurement and Construction Commencement. Transmission Owner shall procure necessary equipment and commence construction of the Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

3.1.4.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

3.1.4.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Network Upgrades;

3.1.4.3 Transmission Owner has received written authorization to proceed with equipment procurement and construction from Interconnection Customer by the date specified in Appendix A;

3.1.4.4 Interconnection Customer has paid the amounts indicated in Milestone 7 in Appendix A; and

3.1.4.5 Interconnection Customer has provided security to Transmission Provider in accordance with Article 3.3 by the dates specified in Appendix A.

3.1.5 Lands of Other Property Owners. If any part of the Transmission Owner's Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Owner, the Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf or on behalf of its Affiliates, including use of its eminent domain authority to the extent permitted and consistent with Applicable Laws and Regulations and, to the extent consistent with such Applicable Laws and Regulations, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Network Upgrades upon such property.

- 3.1.6 Construction Status.** Transmission Owner shall keep Interconnection Customer and Transmission Provider advised periodically as to the progress of its respective design, procurement and construction efforts as described in Appendix A. Interconnection Customer may, at any time, request a progress report from Transmission Owner, with a copy to be provided to Transmission Provider. If, at any time, Interconnection Customer determines that the completion of the Network Upgrades will not be required until after the specified In-Service Date, Interconnection Customer will provide written notice to Transmission Owner and Transmission Provider of such later date upon which the completion of the Network Upgrades would be required. Transmission Owner may delay the In-Service Date of the Network Upgrades accordingly.
- 3.1.7 Timely Completion.** Transmission Owner shall use Reasonable Efforts to design, procure, construct, install, and test the Network Upgrades Facilities in accordance with the schedule set forth in Appendix A. If any event occurs that will affect the time for completion of the Network Upgrades, or the ability to complete any of them, Transmission Owner and/or Transmission Provider shall promptly notify Interconnection Customer, with a copy to the other Party. In such circumstances, Transmission Provider shall, within fifteen (15) days of such notice, convene a technical meeting with Interconnection Customer and Transmission Owner to evaluate the alternatives available to Interconnection Customer. Transmission Owner and/or Transmission Provider shall also make available to Interconnection Customer all studies and work papers related to the event and corresponding delay, including all information that is in the possession of Transmission Provider or Transmission Owner that is reasonably needed by Interconnection Customer to evaluate alternatives. Transmission Owner shall, at Interconnection Customer's request and expense, use Reasonable Efforts to accelerate its work under this Agreement to meet the schedule set forth in Appendix A, provided that Interconnection Customer authorizes such actions and the costs associated therewith in advance.
- 3.1.8 Generating Facility Operation.** Interconnection Customer agrees not to operate the Generating Facility while KAMO's transmission line to Fairfax is connected to Transmission Owner's system through the existing interconnection as shown in Exhibit A1. Transmission Owner shall provide notice to Interconnection Customer substantially in the form of Appendix B when the Network Upgrades have been placed in service and Interconnection Customer can operate the Generating Facility through the Network Upgrades.

3.2 Interconnection Costs and Credits.

- 3.2.1 Costs.** Interconnection Customer shall pay to Transmission Owner costs (including taxes and financing costs) associated with seeking and obtaining all necessary approvals and of designing, engineering, constructing, and testing the Network Upgrades, as identified in Appendix A.

3.2.2 Credits.

3.2.2.1 Credits for Amounts Advanced for Network Upgrades. Interconnection Customer shall be entitled to credits in accordance with Attachment Z2 of the Tariff for any Network Upgrades including any tax gross-up or other tax-related payments associated with Network Upgrades.

3.2.2.2 Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain transmission credits for transmission service that is not associated with the Generating Facility.

3.3 Provision of Security. At least thirty (30) calendar days prior to the commencement of the procurement, installation, or construction of a discrete portion of Network Upgrades as defined in Appendix A of this Agreement, Interconnection Customer shall provide Transmission Provider a letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 17.2. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Network Upgrades as defined in Appendix A of this Agreement and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider or Transmission Owner for these purposes. If Interconnection Customer requests suspension pursuant to Article 3.1.2, Interconnection Customer may be required to provide Transmission Provider security in the form described above for its allocated share of Network Upgrade(s) as defined in Appendix A of this Agreement. In addition, the letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

3.4 Taxes.

3.4.1 Interconnection Customer Payments Not Taxable. The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Owner for the installation of the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

3.4.2 Representations and Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of

any property transferred to Transmission Owner for the Network Upgrades will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of Network Upgrades that is a "dual-use intertie," within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88-129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Owner's request, Interconnection Customer shall provide Transmission Owner with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Owner represents and covenants that the cost of the Network Upgrades paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

3.4.3 Indemnification for the Cost Consequences of Current Tax Liability Imposed Upon the Transmission Owner. Notwithstanding Article 3.4.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Owner from the cost consequences of any current tax liability imposed against Transmission Owner as the result of payments or property transfers made by Interconnection Customer to Transmission Owner under this Agreement for Network Upgrades, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Owner.

Transmission Owner shall not include a gross-up for the cost consequences of any current tax liability in the amounts it charges Interconnection Customer under this Agreement unless (i) Transmission Owner has determined, in good faith, that the payments or property transfers made by Interconnection Customer to Transmission Owner should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Owner to report payments or property as income subject to taxation; provided, however, that Transmission Owner may require Interconnection Customer to provide security for the Network Upgrades, in a form reasonably acceptable to Transmission Owner (such as a parental guarantee or a letter of credit), in an amount equal to the cost consequences of any current tax liability under this Article 3.4. Interconnection Customer shall reimburse Transmission Owner for such costs on a fully grossed-up basis, in accordance with Article 3.4.4, within thirty (30) Calendar Days of receiving written notification from Transmission Owner of the amount due, including detail about how the amount was calculated.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the ten year testing period and the applicable statute of limitation, as it may be extended by Transmission Owner upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event

and the payment of any related indemnification obligations as contemplated by this Article 3.4.

- 3.4.4 Tax Gross-Up Amount.** Interconnection Customer's liability for the cost consequences of any current tax liability under this Article 3.4 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the Parties, this means that Interconnection Customer will pay Transmission Owner, in addition to the amount paid for the Network Upgrades, and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Owner ("Current Taxes") on the excess of (a) the gross income realized by Transmission Owner as a result of payments or property transfers made by Interconnection Customer to Transmission Owner under this Agreement (without regard to any payments under this Article 3.4) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit Transmission Owner to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Owner's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Owner will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Owner's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Owner's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 3.4.4 can be expressed as follows: $(\text{Current Tax Rate} \times (\text{Gross Income Amount} - \text{Present Value of Tax Depreciation})) / (1 - \text{Current Tax Rate})$.

- 3.4.5 Private Letter Ruling or Change or Clarification of Law.** At Interconnection Customer's request and expense, Transmission Owner shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Owner under this Agreement are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Owner and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Owner shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Owner shall allow

Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request.

- 3.4.6 Subsequent Taxable Events.** If, within 10 years from the date on which the relevant Network Upgrades are placed in service, (i) Interconnection Customer Breaches the covenants contained in Article 3.4.2, (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and Transmission Owner retains ownership of the Network Upgrades, Interconnection Customer shall pay a tax gross-up for the cost consequences of any current tax liability imposed on Transmission Owner, calculated using the methodology described in Article 3.4.4 and in accordance with IRS Notice 90-60.
- 3.4.7 Contests.** In the event any Governmental Authority determines that Transmission Owner's receipt of payments or property constitutes income that is subject to taxation, Transmission Owner shall notify Interconnection Customer, in writing, within thirty (30) calendar days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Interconnection Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or

otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Owner may file a claim for refund with respect to any taxes paid under this Article 3.4, whether or not it has received such a determination. Transmission Owner reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Owner shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. At any time during the contest, Transmission Owner may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Owner, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. The settlement amount shall be calculated on a fully grossed-up basis to cover any related cost consequences of the current tax liability. Any settlement without Interconnection Customer's

consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Owner for the tax at issue in the contest.

3.4.8 Refund. In the event that (a) a private letter ruling is issued to Transmission Owner which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Owner under the terms of this Agreement is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Owner in good faith that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Owner under the terms of this Agreement is not taxable to Transmission Owner, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Owner are not subject to federal income tax, or (d) if Transmission Owner receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Owner pursuant to this Agreement, Transmission Owner shall promptly refund to Interconnection Customer the following:

- (i) any payment made by Interconnection Customer under this Article 3.4 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,
- (ii) interest on any amount paid by Interconnection Customer to Transmission Owner for such taxes which Transmission Owner did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR §35.19a(a)(2)(iii) from the date payment was made by Interconnection Customer to the date Transmission Owner refunds such payment to Interconnection Customer, and
- (iii) with respect to any such taxes paid by Transmission Owner, any refund or credit Transmission Owner receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to Transmission Owner for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Owner to any Governmental Authority resulting from an offset or credit); provided, however, that Transmission Owner will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Owner has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to Transmission Owner's Network Upgrades.

The intent of this provision is to leave the Parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

3.4.9 Taxes Other Than Income Taxes. Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Owner may appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Owner for which Interconnection Customer may be required to reimburse Transmission Owner under the terms of this Agreement. Interconnection Customer shall pay to Transmission Owner on a periodic basis, as invoiced by Transmission Owner, Transmission Owner's documented reasonable costs of prosecuting such appeal, protest, abatement, or other contest. Interconnection Customer and Transmission Owner shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Owner for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Owner.

3.5 Tax Status. All Parties shall cooperate with each other to maintain their tax status. Nothing in this Agreement is intended to adversely affect any Party's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

ARTICLE 4 FORCE MAJEURE

4.1 No Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 3), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Parties in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 5 INFORMATION REPORTING

5.1 Information Reporting Obligations. Each Party shall, in accordance with Good Utility Practice, promptly provide to the other Parties all relevant information, documents, or data regarding the Party's facilities and equipment which may reasonably be expected to pertain to the reliability of the other Party's facilities and equipment and which has been reasonably requested by the other Party.

- 5.2 Non-Force Majeure Reporting.** A Party shall notify the other Parties when it becomes aware of its inability to comply with the provisions of this Agreement for a reason other than Force Majeure. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including, but not limited to, the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply.

ARTICLE 6

Reserved

ARTICLE 7 INVOICING AND PAYMENTS

- 7.1 Invoice.** Within six months after completion of the construction of the Network Upgrades, the Interconnection Customer shall receive an invoice of the final cost due under this Agreement, including any applicable cost due to termination, which shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Interconnection Customer shall receive a refund of any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.
- 7.2 Payment.** The invoice shall be rendered to the Interconnection Customer at the address specified in Article 16. The Interconnection Customer shall pay the invoice within thirty (30) Calendar Days of receipt. Such payment shall be made in immediately available funds payable to the Transmission Owner, or by wire transfer to a bank named and account designated by the Transmission Owner. Payment of invoices by the Interconnection Customer will not constitute a waiver of any rights or claims the Interconnection Customer may have under this Agreement.
- 7.3 Disputes.** In the event of a billing dispute between the Parties, Transmission Owner, and Transmission Provider shall continue to perform the activities required under this Agreement as long as Interconnection Customer: (i) continues to make all payments not in dispute; and (ii) pays to Transmission Owner or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Owner may provide notice to Interconnection Customer of a Default pursuant to Article 10. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's regulations at 18 C.F.R. § 35.19a(a)(2)(iii).

ARTICLE 8 ASSIGNMENT

- 8.1 Assignment.** This Agreement may be assigned by any Party only with the written consent of the other Parties; provided that a Party may assign this Agreement without the consent of the other Parties to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement; and provided further that Transmission Owner may assign this Agreement without the consent of the other Parties to its affiliate AEP Oklahoma Transmission Company, Inc.; and provided further that Interconnection Customer shall have the right to assign this Agreement, without the consent of either Transmission Provider or Transmission Owner, for collateral security purposes to aid in providing financing for the Facility, provided that Interconnection Customer will promptly notify Transmission Provider and Transmission Owner of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured Party's, trustee's or assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider and Transmission Owner of the date and particulars of any such exercise of assignment right(s), including providing Transmission Provider and Transmission Owner with proof that it meets the requirements of Article 3.3. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

ARTICLE 9 LIMITATION OF LIABILITY

- 9.1 Consequential Damages.** In no event shall any Party be liable to any other Party under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability.

ARTICLE 10 DEFAULT

- 10.1 General.** No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this Agreement or the result of an act or omission of another Party. Upon a Breach, the Non-Breaching Party shall give written notice of such Breach to the Breaching Party. Except as provided in Article 10.2, the Breaching Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) Calendar Days, the Breaching Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently

complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.

10.2 Right to Terminate. If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the Non-Breaching Party shall have the right to declare a Default and terminate this Agreement according to the provisions of Article 11.2. Until such time as either the Default is cured or the Agreement is terminated, the Non-Breaching Party shall be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, shall be entitled to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

ARTICLE 11 TERMINATION OF AGREEMENT

11.1 Expiration of Term. Except as otherwise specified in this Article 11, the Parties' obligations under this Agreement shall terminate at the conclusion of the term of this Agreement.

11.2 Disposition of Facilities Upon Termination of Agreement. Subject to Article 2.2 and the limitations set forth in Article 11.3, in the event of a Default, a non-Defaulting Party may terminate this Agreement only upon the later of (i) its giving of written notice of termination to the other Parties; and (ii) if applicable, the filing at FERC of a notice of termination for this Agreement, which filing must be accepted for filing by FERC.

11.2.1 Transmission Provider and Transmission Owner Obligations. Upon termination of this Agreement, unless otherwise agreed by the Parties in writing, Transmission Owner:

- (a) shall, prior to the construction and installation of any portion of the Network Upgrades and to the extent possible, cancel any pending orders of, or return, such equipment or material for such Network Upgrades;
- (b) may keep in place any portion of the Network Upgrades already constructed and installed; and,
- (c) shall perform such work as may be necessary to ensure the safety of persons and property and to preserve the integrity of the Transmission System (*e.g.*, construction demobilization to return the system to its original state, wind-up work).

11.2.2 Interconnection Customer Obligations. Upon billing by Transmission Owner, Interconnection Customer shall reimburse Transmission Owner for any costs incurred by Transmission Owner in performance of the actions required or

permitted by Article 11.2.1 and for the cost of any Network Upgrades described in Appendix A. Transmission Owner and Transmission Provider shall use Reasonable Efforts to minimize costs and shall offset the amounts owed by any salvage value of facilities, if applicable. Interconnection Customer shall pay these costs pursuant to Article 7.2 of this Agreement.

11.2.3 Pre-construction or Installation. Upon termination of this Agreement and prior to the construction and installation of any portion of the Network Upgrades, Transmission Owner may, at its option, retain any portion of such Network Upgrades not cancelled or returned in accordance with Article 11.2.1(a), in which case Transmission Owner shall be responsible for all costs associated with procuring such Network Upgrades. To the extent that Interconnection Customer has already paid Transmission Owner for any or all of such costs, Transmission Owner shall refund such amounts to Interconnection Customer. If Transmission Owner elects to not retain any portion of such facilities, Transmission Owner shall convey and make available to Interconnection Customer such facilities as soon as practicable after Interconnection Customer's payment for such facilities.

11.3 Survival of Rights. Termination or expiration of this Agreement shall not relieve any Party of any of its liabilities and obligations arising hereunder prior to the date termination becomes effective, and each Party may take whatever judicial or administrative actions as appear necessary or desirable to enforce its rights hereunder. The applicable provisions of this Agreement will continue in effect after expiration, or early termination hereof to the extent necessary to provide for (A) final billings, billing adjustments and other billing procedures set forth in this Agreement; (B) the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect; and (C) the confidentiality provisions set forth in Article 13.

ARTICLE 12 RESOURCES

12.1 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of its affiliates, consultants, contractors, and suppliers, as it deems appropriate, to perform its obligations under this Agreement.

12.1.1 Responsibility of Principal. The use of any affiliates, consultants, contractors and suppliers shall not relieve the hiring Party of any of its obligations under this Agreement.

12.1.2 No Limitation by Insurance. The obligations under this Article 12 will not be limited in any way by any limitation of any insurance policies or coverages, including any subcontractor's insurance.

ARTICLE 13 CONFIDENTIALITY

13.1 Confidentiality.

13.1.1 Designation. If requested by any Party, a Party shall provide in writing, the basis for asserting that the information referred to in this Article 13 warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.1.2 Term. During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article 13, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

13.1.3 Scope. Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Article 13.1.8 of the Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.1.4 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its Affiliates (limited by the Standards of Conduct requirements), subcontractors, employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article 13. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 13.

13.1.5 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses another other Party. The disclosure by any

Party to another Party of Confidential Information shall not be deemed a waiver by the disclosing Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.1.6 No Warranties. By providing Confidential Information, no Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to another Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.1.7 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to another Party under this Agreement or its regulatory requirements.

13.1.8 Order of Disclosure. If a court or a Governmental Authority or entity with the right, power, and apparent authority to do so requests or requires a Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Parties with prompt notice of such request(s) or requirement(s) so that the other Parties may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.1.9 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) calendar days of receipt of a written request from another Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

13.1.10 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article 13. Each Party accordingly agrees that the other Parties shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 13, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 13, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary

for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 13.

13.1.11 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article 13 to the contrary, and pursuant to 18 C.F.R. section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying another Party to this Agreement prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Parties to the Agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner, if consistent with the applicable state rules and regulations.

13.1.12 Subject to the exception in Article 13.1.11, any information that a Party claims is competitively sensitive, commercial or financial information under this Agreement ("Confidential Information") shall not be disclosed by another Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

ARTICLE 14
INFORMATION ACCESS AND AUDIT RIGHTS

14.1 Audit Rights. Subject to the requirements of confidentiality under Article 13 of this Agreement, the accounts and records related to the design, engineering, procurement, and construction of the Network Upgrades shall be subject to audit during the period of this Agreement and for a period of twenty-four months following Transmission Owner’s issuance of a final invoice in accordance with Article 7.1. Interconnection Customer at its expense shall have the right, during normal business hours, and upon prior reasonable notice to the other Parties, to audit such accounts and records. Any audit authorized by this Article 14.1 shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to obligations under this Agreement. Any information provided by Transmission Owner under this Article 14 shall be considered “Confidential Information” subject to the confidentiality provisions of Section 13.1 regardless of whether such information is designated as “confidential”.

ARTICLE 15
DISPUTES

15.1 Submission. In the event any Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, the Parties agree to resolve such dispute using the dispute resolution procedures of the Tariff.

ARTICLE 16
NOTICES

16.1 General. Any notice, demand or request required or permitted to be given by a Party to another Party and any instrument required or permitted to be tendered or delivered by a Party in writing to another Party may be so given, tendered or delivered, as the case may be, by depositing the same with the United States Postal Service with postage prepaid, for transmission by certified or registered mail, addressed to the Parties, or personally delivered to the Parties, at the address set out below:

To Transmission Provider:

Southwest Power Pool, Inc.
Attn: Legal Department
415 N. McKinley, Ste. 140
Little Rock, AR 72205
Email: mharward@spp.org

To Transmission Owner:

Manager, Transmission and Interconnection Services
American Electric Power Service Corporation
212 East 6th Street
Tulsa, OK 74119
Telephone: 918-599-2723
Email: rlpennybaker@aep.com

With copies to:

Managing Director, Transmission Planning and Business Development
American Electric Power Service Corporation
700 Morrison Road
Gahanna, OH 43230
Telephone: 614-552-1600
Email: rwbradish@aep.com

To Interconnection Customer:

Osage Wind, LLC
Robert M. Vosberg, P.E.
2920 Marketplace Drive, Suite 101
Madison, WI 53719
Telephone (608) 819-2322
Email: rvosberg@windcapitalgroup.com

16.2 Billings and Payments. Billings and payments shall be sent to the addresses shown below unless otherwise agreed to by the Parties.

To Transmission Owner:

Send payments for construction invoices to the address specified on the invoice.

To Transmission Provider:

Southwest Power Pool, Inc.
Attn: Accounting
415 N. McKinley, Ste. 140
Little Rock, AR 72205
Email: rgay@spp.org

To Interconnection Customer:

Osage Wind, LLC
Randy Prior
Director, Accounting
1430 Washington Avenue, Suite 300
St. Louis, MO 63103
Telephone (314) 685-3034
Email: rprior@windcapitalgroup.com

ARTICLE 17 MISCELLANEOUS

- 17.1 Waiver.** Except as otherwise provided for in this Agreement, the failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be waived by the Parties entitled to the benefits thereof only by a written instrument signed by the Parties granting such waiver. Any waiver at any time by a Party of its rights with respect to a Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver or continuing waiver with respect to any subsequent Default or other matter.
- 17.2 Governing Law.** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state where the Network Upgrades are located without regard to its conflicts of law principles.
- 17.3 Headings Not to Affect Meaning.** The descriptive headings of the various Sections and Articles of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.
- 17.4 Reserved.**
- 17.5 Entire Agreement.** This Agreement, together with all the exhibits, constitutes the final and entire written agreement among the Parties hereto with reference to the subject matter hereof, and is a complete and exclusive statement of those terms and conditions and supersedes all prior negotiations, representations or agreements, either written or oral, with respect to the specific subject matter of this Agreement. No change or modification as to any of the provisions hereof shall be binding on any Party unless reduced to writing and approved by the duly authorized officer or agent of Interconnection Customer, Transmission Owner, and Transmission Provider.
- 17.6 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
- 17.7 Binding Effect; No Third Party Beneficiaries.** This Agreement and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the Parties

hereto and their successors and assigns. No person or party shall have any rights, benefits or interests, direct or indirect, arising from this Agreement except the Parties hereto, their successors and authorized assigns. The Parties expressly disclaim any intent to create any rights in any person or party as a third party beneficiary to this Agreement.

- 17.8 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendix or exhibit hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed to be the final intent of the Parties.
- 17.9 Regulatory Requirements.** Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the receiving Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek these other approvals as soon as is reasonably practicable.
- 17.10 No Right to Transmission Service.** This Agreement does not in and of itself convey transmission service rights to Interconnection Customer or Transmission Owner; and nothing contained herein is intended to provide any obligation on the part of Transmission Provider to grant transmission service pursuant to the Tariff to the other Parties.

ARTICLE 18 REPRESENTATIONS AND WARRANTIES

- 18.1 General.** Each Party hereby represents, warrants and covenants as follows with these representations, warranties, and covenants effective as to the Party during the full time this Agreement is effective:
- 18.1.1 Good Standing.** Such Party is duly organized or formed, as applicable, validity existing and in good standing under the laws of its state of organization or formation, and is in good standing under the laws of the respective state(s) of their organization as stated in the preamble of this Agreement.
- 18.1.2 Authority.** Such Party has the right, power and authority to enter into this Agreement, to become a party hereto and to perform its obligations hereunder, and this Agreement is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 18.1.3 No Conflict.** The execution, delivery and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit or order or material agreement or instrument applicable to or binding upon such Party or any of its assets.

18.1.4 Consent and Approval. That it has sought or obtained, or, in accordance with this Agreement will seek or obtain, each consent, approval, authorization or order of, or acceptance of a filing with, or notice to, any Governmental Authority with jurisdiction concerning this Agreement, in connection with the execution, delivery and performance of this Agreement.

18.1.5 Solvency. That such Party is financially solvent.

**[The remainder of this page is intentionally blank.
The next page is the signature page.]**

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original Agreement among the Parties.

Southwest Power Pool, Inc.

By: /s/Carl Monroe

Name: Carl Monroe

Title: EVP & COO

Public Service Company of Oklahoma

By: /s/ Michael Heyeck

Name: Michael Heyeck

Title: Vice President

Osage Wind, LLC

By: /s/ Ciaran O'Brien

Name: Ciaran O'Brien

Title: Chief Executive Officer

Affected Systems' Facilities Construction Agreement

APPENDIX A

**NETWORK UPGRADES, COST ESTIMATES AND RESPONSIBILITY,
TRANSMISSION CREDITS, CONSTRUCTION SCHEDULE AND MONTHLY
PAYMENT SCHEDULE**

This Appendix A is a part of the Affected Systems' Facilities Construction Agreement between Interconnection Customer, Transmission Owner, and Transmission Provider.

1.1 Network Upgrades to be installed by Transmission Owner.

- Replace existing 138 kV circuit breaker at Shidler substation with a 4-breaker ring. Provide a terminal for KAMO's 138 kV line from Remington Station.
- Replace ground switch with circuit switcher.
- Move terminal for OGE Osage line.
- Replace relay panels on the OGE Osage and Mound Road line terminals
- 138 kV meter transformers and meter at Shidler Station
- Install relay panel, line trap and RTU at Mound Road station

○ Estimated cost \$5,728,000

1.2 Financial Security.

The amount of financial security required in Section 3.3 is \$0.00.

1.3 Milestone and Payment Schedule.

MILESTONE NUMBER	DESCRIPTION	Responsible Party	DATE (Months After Execution of Amended Agreement)
1	Provide authorization to proceed with design, procurement and Construction of the Network Upgrades	Interconnection Customer	07-28-2011
2	Provide Security per Article 3.3 equal to the, total estimated cost of the Network Upgrades Appendix A	Interconnection Customer	n/a
3	Full execution of Amended Facilities Agreement	All	0
4	Send Invoice #1 to Interconnection Customer \$500,000	Transmission Owner	0
5	Make Payment #1 to Transmission Owner - \$500,000 (per Sec. 3.1.3.2)	Interconnection Customer	1
6	Send Invoice #2 to Interconnection Customer \$1,500,000	Transmission Owner	1
7	Make Payment #2 to Transmission Owner - \$1,500,000	Interconnection Customer	2
8	Send Invoice #3 to Interconnection Customer - \$1,500,000	Transmission Owner	3
9	Make Payment #3 to Transmission Owner \$1,500,000 (per Sec. 3.1.4.4)	Interconnection Customer	4
10	Obtain Governmental Authorizations required for construction	Transmission Owner	5
11	Send Invoice #4 to Interconnection Customer - \$1,500,000	Transmission Owner	6
12	Make Payment #4 to Transmission Owner \$1,500,000	Interconnection Customer	7
13	Send Invoice #5 to Interconnection Customer - \$728,000	Transmission Owner	9
14	Make Payment #5 to Transmission Owner \$728,000	Interconnection Customer	10
15	Complete and energize the Network Upgrades	Transmission Owner	13
16	Connect Interconnection Customer's transmission line to Transmission Owner's Shidler Station	Transmission Owner	13
17	In-Service Date for Network Upgrades – Provide notice in the form of Appendix B to Interconnection Customer.	Transmission Owner	13
18	Issue Final Invoice (per Sec. 7.2) to True-up total actual cost of the Network Upgrades	Transmission Owner	17
19	Final payment to Transmission Owner	Interconnection Customer	18

Exhibit A1
One-Line Diagram of the Existing KAMO Shidler Interconnection
with the Transmission System

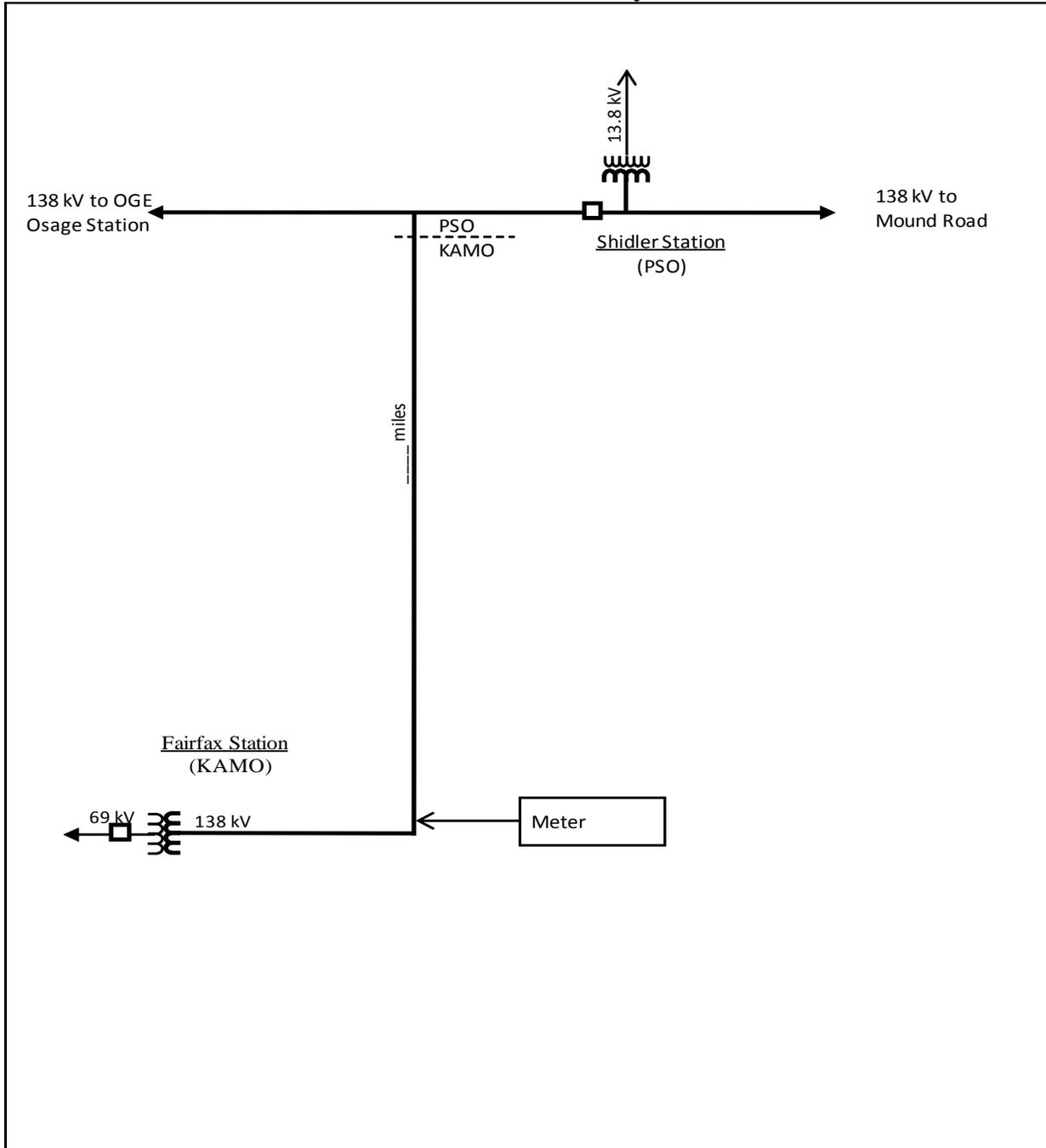
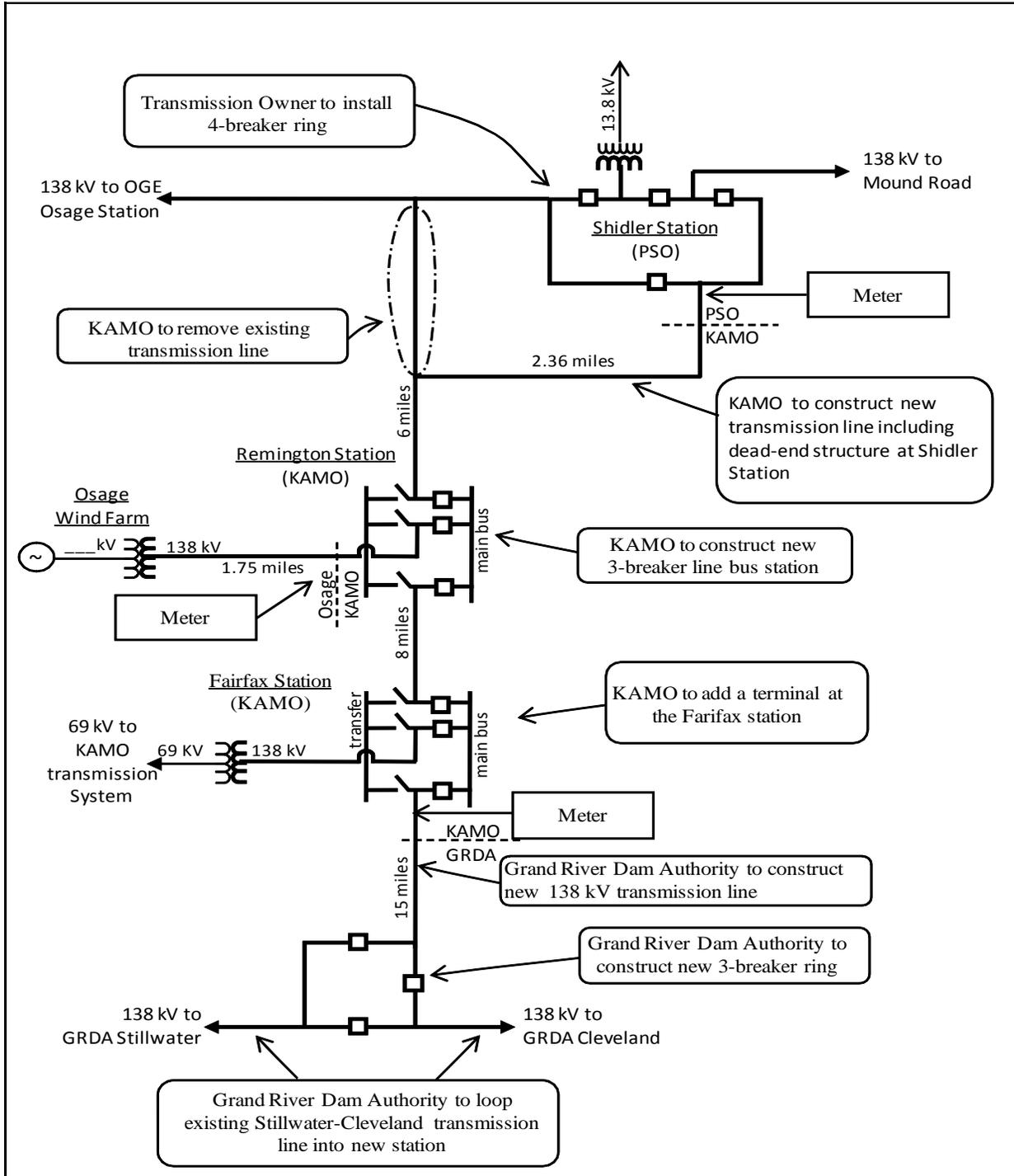


Exhibit A2 One-Line Diagram of Network Upgrades and Generating Facility



Affected Systems' Facilities Construction Agreement
APPENDIX B
NOTIFICATION OF COMPLETED CONSTRUCTION

[Date]

-

-

Interconnection Customer Address

Phone:

Fax:

Email:

Re: Completion of Network Upgrade

Dear [Name or Title]:

This letter is sent pursuant to the Affected Systems' Facilities Construction Agreement among Public Service Company of Oklahoma, Osage Wind, LLC, and the Southwest Power Pool, Inc., dated July 28, 2011.

On [Date], Transmission Owner substantially completed work on the Network Upgrades required to facilitate the safe and reliable interconnection and operation of Interconnection Customer's Generating Facility. Transmission Owner confirms that the Network Upgrades are in service.

Thank you.

[Signature]

[Transmission Owner Representative]